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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,854	10/17/2003	Ralph M. Pivonka	2-1271-013	9571

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DES MOINES, IA 50309-4076

EXAMINER
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MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/687,854

**Applicant(s)**

PIVONKA, RALPH M.

**Examiner**

Leigh McKane

**Art Unit**

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10172003</u> . | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 2 of the claim, “the tractor” lacks positive antecedent basis because it has not been previously positively recited. It is noted that the limitation “a hitch for attaching said flamer to a tractor” in claim 5, does not positively recite the tractor because it is recited in the context of an intended use of the hitch and need not be present.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 5, 6, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Benjamin (US 5,826,371).

Benjamin teaches an apparatus including a hood **30**, a burner nozzled extending into the hood (col.4, lines 32-33), and a hitch **11** for connecting to a towing vehicle. The hood **30** includes an external frame **33** and a skin **32**. The burner is supplied with fuel carried by the

towing vehicle (col.2, lines 66-67). Skids **26** support at least some of the weight of the flamer in operation.

5. Claims 5, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Koboura (JP 06-078658).

Koboura teaches a flamer including a hood, a fuel tank **2** mounted on the hood, burners **1** situated under the hood, and a hitch for attaching the flamer to a tractor. See Figures 1 and 3. The English abstract indicates that the hood (“above ground part”) is thermally insulated.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koboura in view of Jones (US 5,030,086).

With respect to claims 1-3, Koboura teaches a method of sterilizing soil (a surface) using a mobile, enclosed flamer. The flamer includes a hood and a plurality of burners **1**. The method includes transporting the flamer to a location where the flames are contained within the hood to sterilize the soil with hot air. Koboura does not disclose setting the flamer on skids.

Jones teaches a flamer wherein skids **S** are employed to support a burner above the ground surface. See Figure 5. As skids are commonly used in agriculture as a means to support the weight of crop treatment devices, they would have been an obvious addition to Koboura.

As to claim 4, while Koboura does not disclose adjusting the burner angle, Jones teaches that the burner housing, and thus the burner, is adjustable “through a wide range of positions to assure effective burning and destruction of weeds, insects, micro-organisms, and the like.” See col.3, lines 54-58. For this reason, it is deemed obvious to one of ordinary skill in the art to adjust the housing of Koboura in order to adjust the burner angle and assure effective soil disinfection, as desired by Koboura.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin or Koboura as applied to claim 5 above, and further in view of Clarke (US 4,420,901).

Neither Benjamin nor Koboura disclose a three-point hitch. Clarke, however, teaches use of a three-point hitch on a flamer. See col.2, lines 15-18. As replacing the hitches of Benjamin and Koboura with a three-point hitch involves no invention, it would have been an obvious modification to the flamers of either Benjamin or Koboura.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin or Koboura as applied to claim 5 above, and further in view of Stephenson et al. (US 4,805,927).

Neither Benjamin nor Koboura disclose a quick coupler as the hitch. Stephenson et al. teaches an implement hitch having a quick coupler **68** for connection with a quick coupler **18** of a tractor. As replacing the hitches of Benjamin and Koboura with a quick coupler involves no invention, it would have been an obvious modification to the flamers of either Benjamin or Koboura.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin or Koboura as applied to claim 5 above, and further in view of Miles (US 4,088,122).

While both Benjamin and Koboura disclose wheels, neither teach that the hitch is a

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tongue. Miles discloses a flamer having a tongue hitch **38** for connecting to a draw bar **39** of a tractor. As replacing the hitches of Benjamin and Koboura with a tongue hitch involves no invention, it would have been an obvious modification to the flamers of either Benjamin or Koboura.

11. Claims 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koboura as applied to claims 5 and 10 above, and further in view of Benjamin.

With respect to claim 11, the fuel tank of Koboura is located on the flamer, not on the tractor. However, Benjamin discloses that flamer fuel tanks may also be mounted on the towing vehicle, resulting in decreased weight of the flamer and the ability to supply several flamers from a single fuel source. See col.2, line 65 to col.3, line 3. For these reasons, it would have been obvious to one of ordinary skill in the art to mount the fuel tank of Koboura on the towing vehicle.

As to claim 16, Koboura does not disclose a heat shield between the hood and the fuel tank. Benjamin teaches a heat shield **40** mounted between the hood and the burner body. The heat shield is disclosed to reduce heat conduction from the hood to the burner body. Since it would have been a matter of necessity to reduce heat conduction from the hood of Koboura to the fuel tank in order to reduce the chance of explosion, one would have found it obvious to put the heat shield of Benjamin between the hood and fuel tank of Koboura.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin or Koboura as applied to claim 5 above, and further in view of Jones.

Neither Benjamin or Koboura disclose a means of adjusting the burner angle. Jones teaches that the burner housing, and thus the burner, is adjustable about a pivot **36** “through a

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wide range of positions to assure effective burning and destruction of weeds, insects, micro-organisms, and the like.” See col.3, lines 48-58. For this reason, it is deemed obvious to one of ordinary skill in the art to adjust the housings of Koboura and Benjamin in order to adjust the burner angle and assure effective soil treatment as desired by Koboura and Benjamin.

13. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koboura as applied to claim 5 above, and further in view of Jones.

Koboura does not disclose setting the flamer on skids. Jones teaches a flamer wherein skids S are employed to support a burner above the ground surface. See Figure 5. As skids are commonly used in agriculture as a means to support the weight of crop treatment devices, they would have been an obvious addition to Koboura. Moreover, since Jones discloses that the burner is also height adjustable over the ground (col.3, lines 33-39), it would have been obvious to provide a means to adjust the height when in connection with a skid as well.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Opfel (US 2003/0192485).


Opfel teaches a method of sterilizing poultry litter wherein a flamer is employed to heat accumulated poultry litter such that it is sterilized. See paragraphs [0032], [0092], and [0106]. The flame may be under a hood that extends over the litter. Although Opfel does not disclose putting the flamer on skids, it is obvious from the disclosure of Opfel that the flamer is in a stationary and spaced position over the litter. As skids are an obvious means of supporting a flamer in this configuration, they would have been an obvious addition to the method of Opfel.

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
10 October 2006